IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1204 OF 2004
(Condonation of Delay)

ALONG WITH

CRIMINAL APPLICATION NO.948 OF 2005
(For Leave to Appeal)

The State of Maharashtra Appellant
vs.
1. Shri Ashokkumar Jairam Kesharwani

2. Sou.Sushiladevi Ravishankar Kesharwani Respondents

Ms.U.V.Kejriwal, Additional Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 21st February 2005

P.C.

The present respondents faced trial for the offences punishable under Sections 341, 342, 376(2)(g) and 506 read with 34 IPC in Sessions Case No.284/2001. The VIth Additional Sessions Judge, Thane, upon conclusion of trial, vide his judgment dated 14th July 2003 acquitted the accused persons. The State preferred criminal appeal (now converted into criminal application for leave to appeal) on 8th March 2004 aggrieved by the judgment of acquittal. By this application, it is prayed that delay in filing the criminal appeal (criminal application for leave to appeal) be condoned.

2. According to office report, the delay is of 125

days.

3. The stereotype explanation that due to heavy workload in the office of the Public Prosecutor and lack of sufficient staff such as stenographers and typists is put forth for condonation of delay. Even if on a liberal consideration of the matter we accept the explanation for the period from 14th July 2003 to 6th November 2003 as set out in paragraphs 2 and 3 of the application, we find that delay from 6th November 2003 to 8th March 2004 is not sufficiently explained. Despite all the constraints under which the office of the Public Prosecutor may be working, drafting and filing of criminal appeal cannot take a period as long as four months.

4. The explanation submitted in the criminal application for condonation of delay does not constitute sufficient cause. Criminal application for condonation of delay is liable to be dismissed. We order accordingly.

5. Even otherwise we wanted to satisfy ourselves whether there is any merit in the criminal application for leave to appeal and, therefore, we heard the learned Additional Public Prosecutor and perused the impugned judgment.

6. Much less the gang rape, the prosecution has not been able to prove any rape on the prosecutrix by the present respondent no.1. Even prosecutrix herself does not state that the respondent no.1 penetrated his penis into her vagina. The prosecutrix has not stated that the respondent no.1 raped her. According to prosecutrix, after the respondent no.2 had pushed her into the house of respondent no.1 and respondent no.1 undressed her and pressed her chest and bissed her, she became unconscious. The case of rape is thus not established by the deposition of prosecutrix. The medical evidence does not bear out the case of rape. The prosecution case is not established beyond reasonable doubt.

7. In the circumstances, the view taken by the learned Additional Sessions Judge, Thane appears to be possible view on the evidence on record.

8. We are, thus, satisfied that criminal application no.1204/2004 for condonation of delay and criminal application no.948/2005 for leave to appeal are liable to be dismissed. We order accordingly.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)